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EX PARTE OR LATE FILED

January 24, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: **EX PARTE PRESENTATION**
MM Docket No. 92-260 and CS Docket No. 95-184

Dear Mr. Caton:

On January 23, 1997, Philip J. Kantor (of the law firm of Bienstock & Clark) and I met, on behalf of Comcast Cable Communications, Inc., with the following members of the Commission's staff to discuss the above-referenced pending rulemaking proceeding:

Jackie Chorney, Senior Legal Advisor to the Chairman
Marsha MacBride, Legal Advisor to Commissioner Quello
Suzanne Toller, Legal Advisor to Commissioner Chong
Anita Wallgren, Legal Advisor to Commissioner Ness
John Logan, Deputy Chief, Cable Services Bureau
Lawrence Walke, Senior Attorney, Policy and Rules Division,
Cable Services Bureau

Enclosed are two copies of written materials presented by Mr. Kantor at those meetings.

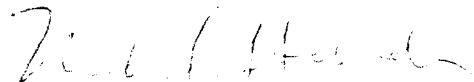
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Mr. William F. Caton
January 24, 1997
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If there are any questions concerning this matter, please let me know.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael S. Schooler", written in a cursive style.

Michael S. Schooler

MSS/rb
cc (w/o encl.):

Ms. Jackie Chorney,
Ms. Marsha MacBride
Ms. Suzanne Toller
Ms. Anita Wallgren
Mr. John Logan
Mr. Lawrence Walke
Mr. Philip J. Kantor

RECEIVED

JAN 24 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

EX PARTE PRESENTATION

**Presented on behalf of Comcast Cable Communications, Inc.
on the Further Notice of Proposed Rulemaking
In the Matter of Implementation of the Cable Television
Consumer Protection and Competition Act
Cable Home Wiring, MM Docket No. 92-260**

and

**on the Notice of Proposed Rulemaking
In the Matter of
Telecommunications Services Inside Wiring
Customer Premises Equipment, CS Docket No. 95-184**

**Terry S. Bienstock, P.A.
Philip J. Kantor, Esq.
Bienstock & Clark
First Union Financial Center
200 S. Biscayne Blvd, Suite 3160
Miami, FL 33131
Telephone: 305-373-1100
Facsimile: 305-358-1226**

**ALTERNATE MULTICHANNEL VIDEO PROGRAM DISTRIBUTORS
STRIVE FOR EXCLUSIVE ARRANGEMENTS
AT MULTIPLE DWELLING UNITS**

NAME OF DOCUMENT	Tab#
<i>Exclusive Agreements</i>	
<ul style="list-style-type: none"> • <i>Exclusive Video Programming Service Agreement</i> People's Choice TV of St. Louis, Inc., November 3, 1994 (St. Louis, Mo.) 	1
<ul style="list-style-type: none"> • <i>Rent-to-Own Satellite Lease Agreement</i> Interact private Cable Corporation, December 9, 1994 (Miami Beach, FL) 	2
<ul style="list-style-type: none"> • <i>Wireless Cable Television Right of Entry Agreement Rebate</i> Heartland Wireless Communications, Inc., January 1, 1996 (Lubbock, Texas) 	3
<ul style="list-style-type: none"> • <i>Commercial Right of Entry and Cable Television Agreement</i> TVMAX Telecommunications, Inc., a wholly-owned subsidiary of OpTel, Inc., May 29, 1996 (Van Nuys, CA) 	4
<ul style="list-style-type: none"> • <i>Agreement for Bulk Cable Television Service</i> TVMAX Telecommunications, Inc., a wholly-owned subsidiary of OpTel, Inc., undated (Hollywood, FL) 	5
<i>Statement Confirming Need for Exclusivity</i>	
<ul style="list-style-type: none"> • <i>Memorandum in Support of Defendants' Motion to Dismiss</i> <i>Comcast's Complaint</i> American Telecasting, Inc., October 4, 1996 (Little Rock, Ark) 	6
<i>Termination Letter</i>	
<ul style="list-style-type: none"> • <i>H.A. Langer & Associates to Chicago Cable Co. (October 31, 1996)</i> (Chicago, ILL) 	7
<i>Communications to Tenants</i>	
<ul style="list-style-type: none"> • <i>Lindbergh Properties Notice to Residents of Chestnut Run</i> <i>Condominiums, undated (Kirkwood, Mo.)</i> 	8
<i>Court Decisions</i>	
<ul style="list-style-type: none"> • <i>Multi-Channel TV Cable Co. V. Charlottesville Quality Cable</i> <i>Operating Co., et al. (Order of Injunction and Findings of Fact)</i> 	9

(U.S. Dist. Ct. Western Dist, Va., December 15, 1993)

- *Multi-Channel TV Cable Co. V. Charlottesville Quality Cable Operating Co., et al.* (affirming order of granting Injunction) 10
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- *Cox Communications West Texas, Inc. v. Heartland Wireless — Lubbock, Inc., et al.* (Temporary Injunction) 11
(99th District Court of Lubbock County, Texas. April 29, 1996)
- *TCI of East San Fernando Valley, L.P. v. OpTel, Inc., et al.* 12
(Order Granting Preliminary Injunction) (Superior Court of the State of California for the County of Los Angeles, November 22, 1996)

Court Testimony

- Testimony of Todd Schuler of Heartland Wireless — Lubbock, Inc. 13
during hearing on motion for temporary injunction in *Cox Communications West Texas, Inc. v. Heartland Wireless — Lubbock, Inc., et al.* (99th District Court of Lubbock County, Texas, April 15, 1996) (discussion of post-wiring by Heartland)

Terry S. Bienstock, P.A.
Philip J. Kantor, Esq.
Bienstock & Clark
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First Union Financial Center
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Facsimile: 305-358-1226

EXCLUSIVE VIDEO PROGRAMMING SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this 3rd day of November, 1994, by and between PEOPLE'S CHOICE TV OF ST. LOUIS, INC. ("Operator"), a Delaware corporation with its principal place of business at 10000 Old Olive Street Road., St. Louis, Missouri, 63141 and Ray Kruse Construction, Inc. ("Owner"), a Missouri Corporation, with its principal place of business at 9736 South Broadway St. Louis Missouri, 63125

RECITALS

WHEREAS, Operator is in the business of constructing, maintaining and operating signal distribution systems for the delivery of multichannel video and audio programming and other services to the public, including property owners and developers, consisting of broadcast programming and nonbroadcast satellite or microwave or fiber delivered programming whether offered to subscribers as a packaged combination of such programming or on a per channel, per event, per view or per demand basis, and potentially consisting of information and interactive services ("Signal Distribution Service" or "SDS");

WHEREAS, Owner is the record title holder of certain real property located at Primm & Germania, as more particularly described in Exhibit A hereto, and commonly known as Parque Carondelet (the "Property") and consisting of 328 residential units;

WHEREAS, Owner wishes to secure the SDS for the delivery of multichannel video and audio programming and other services to residents of the Property and Operator wishes to provide such services;

NOW, THEREFORE, based upon the mutual covenants and conditions as hereinafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows

1. Exclusivity and Access Rights.

A. Exclusivity. Owner hereby grants and agrees that the SDS provided by Operator will be the sole and exclusive multichannel video and audio programming service, including any additional information and interactive services, provided to the residents of the Property for the term of this Agreement and any renewal periods thereof. Owner therefore agrees that no multichannel video and audio programming delivery service other than that of Operator, including but not limited to other franchised cable television ("CATV"), satellite master antenna television ("SMATV"), multichannel multipoint distribution service ("MMDS"), direct broadcast satellite ("DBS"), telephone company or telephone company provided programming and delivery services be installed or operated or distributed to residents of the Property during the term of this Agreement and any renewals thereof.

EXHIBIT

B

B. Cable Easement. Owner hereby grants to Operator during the term of this Agreement and any renewals thereof an exclusive easement, right, privilege and right-of-way over, on, under and through the Property and the buildings or units located thereon, to construct, install, lay, relocate (as approved by Owner), maintain, repair and operate its SDS system within the Property and all the units located within the Property, and to sell, market and provide the SDS service to the Property and all the buildings and units located within the Property. Provided, however, that the exercise of such easement shall be subject to the prior approval of the Owner. Owner agrees to execute the Easement attached as Exhibit B.

C. Covenants and Assignments. The rights and obligations under this Agreement shall constitute covenants, conditions, restrictions and equitable servitudes running with the land, binding and inuring to the benefit of all future owners in the Property or owners of any interest in the Property, such that this Agreement shall remain in full force and effect for the duration of this Agreement and any renewals thereof. This Agreement shall bind and inure to the benefit of successors, assigns and representatives of the parties hereto. Operator shall have the right to assign this Agreement and its rights and obligations hereunder. If Owner transfers or conveys or otherwise disposes of the Property in any manner, Owner will notify the buyer or transferee of the existence of this Agreement, together with all easements and equitable servitudes.

2. Installation and Maintenance

A. Installation. Operator shall, install new wiring and equipment throughout complex with new underground and color coordinated conduit on all brick/stucco building surfaces. All pavement damage shall be repaired to present condition and green space damage shall be graded, seeded and strawed. Operator shall, at its own expense, install the reception, processing and distribution equipment, mast-mounted television broadcast antennas, transmission and distribution lines, wires, cables, optical fiber, receivers, taps, amplifiers, other electronic devices, pedestals and all other equipment on the Property, including within any buildings or residential units, necessary for the reception of Operator's SDS by residents ("Equipment"), provided however, that the precise location for the installation of all such Equipment shall be subject to the reasonable prior approval of the Owner. Owner agrees to cooperate with Operator in obtaining permits, consents, licenses or other governmental approvals necessary for the installation and operation of the Equipment and SDS, provided that Operator shall pay all reasonable costs of Owner associated therewith. To evidence the parties' intent that Operator retain exclusive ownership of the Equipment, Owner shall execute UCC 1 Financing Statements as directed by Operator which shall be recorded among the public records of the County in which the Property is located and such other necessary places in order that any and all third parties shall be on notice of the Equipment ownership. All costs associated with the preparation and recording of the forms shall be paid by Operator.

B. **Maintenance.** Operator shall, at its own expense, operate and maintain the Equipment and the MATV System and keep same in good repair in accordance with all applicable governmental regulations concerning technical standards. In no event shall Owner interfere with or attempt to repair, maintain or service the Equipment or the MATV System or allow any other third party to do so. Operator will use its best efforts to make service and repair calls during regular business hours.

3. **Liens.**

A. Owner shall not permit nor cause the attachment of any lien, mortgage or other encumbrance to the Equipment or the rights granted herein. Any lien, encumbrance, mortgage or judicial proceeding which may affect the Equipment or the use of any MATV System or any of the rights granted Operator herein will be reported to Operator within 30 days of the Owner having received notice. Operator shall not permit nor cause the attachment of any lien, mortgage or other encumbrance to the Property. Operator shall have the right to mortgage, pledge or otherwise grant a security interest and lien in this Agreement and in its Equipment.

B. Owner agrees to and warrants that it will obtain consent to enter into this Agreement from the holder of the primary, mortgage, deed of trust, or encumbrance which have priority over this Agreement and which could result in the extinguishment of this Agreement by virtue of a foreclosure or similar proceeding, said consent to be evidenced by the holder's execution of a nondisturbance agreement in substantially the form of Exhibit C attached hereto and incorporated herein by reference. Said nondisturbance agreements must be delivered to Operator within thirty (30) days or this Agreement may be rendered null and void at Operator's sole discretion with no penalty to either party. Operator is under no duty and is released from performing any of its obligations under this Agreement until all said nondisturbance agreements are delivered to Operator.

4. **Additional Properties.** In the event Owner adds additional residential dwelling units to the Property, then Operator may, at its discretion, serve said residential units subject to the same terms and conditions of this Agreement.

5. **Programming.** Operator will use reasonable efforts to secure the video and audio programming services described in the attached Exhibit D for the SDS. Operator shall have sole discretion with respect to the selection and pricing of such programming, including any information or interactive services to be provided, and Owner shall have no authority over or oversight of Operator's programming or pricing decisions. Operator's liability in any monthly period for any failure to provide any signal, or for any material interruption thereof, shall be limited to a refund of any fees paid with respect to any such signal not so provided, prorated over the applicable monthly billing period, provided that Operator shall have no liability for signal outages or interruptions lasting less than 24 hours in duration. Operator shall not otherwise be responsible to Owner or any subscriber for the temporary or permanent loss,

responsible to Owner or any subscriber for the temporary or permanent loss, unavailability or discontinuance of any of the signals or services or any similar signals or services which Operator has substituted therefore. Operator shall pay all necessary copyright royalty fees for the programming transmitted and shall hold Owner and customers harmless from any claim in relation thereto.

6. **Customer Charges.** Operator shall offer the SDS to the residents of the Property pursuant to terms and conditions within the Operator's sole discretion. Operator shall charge, bill and collect from the resident-subscribers all fees for all video and audio programming, and other information and interactive services. State and local sales taxes, if and when applicable, will be added to such charges. The determination of the amount of any fees to be charged to resident-customers is within the sole discretion of Operator. Operator agrees to guarantee two (2) year price rate on execution of this Agreement.

7. **Owner Marketing.** Operator may place advertising in the common areas of the Property subject to Owner's approval. Owner agrees to inform all new residents prior to move-in of the availability of Operator's service and Operator's telephone number. Owner shall provide the Operator with the names and unit addresses of all residents within ten (10) days of the execution of. Door hangers, no more than once every three (3) months.

8. **Termination of Current Provider and Owner Compensation.** Owner and Operator agree to the following schedule for the termination of the current SDS provider and payment of Owner compensation:

1. Within three (3) days of the execution of this Agreement, Owner agrees to notify the current SDS provider that the current Agreement is terminated in sixty (60) days.

2. Within fourteen (14) days of the execution of this Agreement, Operator agrees to commence installing and building its SDS system.

3. Upon completion, Operator will activate its SDS system.

4. A) Operator agrees to pay to owner ten thousand dollars (\$10,000) within one week upon execution of this agreement.

B) When the current SDS provider has been terminated and there is no other SDS provider at the Property, Operator shall pay within one week to Owner twentyfive thousand dollars (\$25,000).

9. **Term.** The term of this Agreement shall commence upon the execution of this Agreement and run for twenty (20) years

10. **Default and Cancellation.** Either party, in addition to whatever other remedies it may have at law or otherwise, may elect to terminate this Agreement and is relieved of any liabilities or obligations hereunder (except for such liabilities or obligations that accrued prior to the date of termination) in the event of any default on the part of the other party. Either party shall be deemed in default hereunder if it breaches or defaults in its performance of any material obligations hereof, including a breach of any representation or warranty, and fails to remedy or make a good faith attempt to remedy same within a period of sixty (60) days after receipt of written notice from the other party by certified mail, said written notice to be identified as a notice of default and to describe such breach or default in its entirety without any other oral or written material incorporated by reference. Operator may, upon thirty (30) days prior written notice, also elect to terminate this Agreement whereby either party is relieved of any liability or obligations hereunder (except for such liabilities or obligations that accrued prior to the date of termination) upon the occurrence of (a) any governmental law, rule, regulation or court order rendering it uneconomical or unreasonably difficult within Operator's sole discretion for Operator to install, maintain or operate the SDS as agreed herein, including but not limited to a loss of exclusivity, or (b) sufficient instances, determined within Operator's sole discretion, of equipment damage caused by tenants or of thefts of cable service, or (c) a reduction in customer penetration levels for any reason, including but not limited to a loss of exclusivity, such that less than 50 percent of the total number of Property residents subscribe to the SDS service for a period of three consecutive months. With respect to subsection (c), Operator agrees to remain on the Property despite such reduction if Owner notifies Operator, within fifteen (15) days of receiving Operator's election to terminate, that Owner will subsidize Operator with contributions sufficient to compensate Operator for such reduction in subscriber penetration levels.

11. **Final Disposition of the Equipment.** Upon the termination of this Agreement for any reason, Operator has the option (1) to abandon the Equipment without cost or obligation; (2) to sell the Equipment at fair market value to Owner; (3) to sell the Equipment to a third party; or (4) to remove all or any part of the Equipment at its own expense, restoring the Property to a condition approximately equivalent to its original condition, normal wear and tear excepted.

12. **Confidentiality/Nondisclosure.** Owner acknowledges that, by reason of its relationship with Operator, it will have access to confidential information of Operator, including but not limited to, information pertaining to this Agreement or Operator's services, products, methods of operation and marketing, pricing, trade secrets, markets, financial results and position, customer lists, and relationships between Operator and its sales staff, affiliates, customers, licensees, suppliers, repair personnel and other business associates (collectively, the "Confidential Information"). Owner acknowledges that the Confidential Information is a valuable, proprietary and unique asset of Operator and covenants that, both during and after the term of this Agreement, Owner, and its officers, directors, shareholders, partners, employees and agents, shall not disclose any Information to any person without Operator's prior written consent. Nothing herein shall be deemed to be a license to Owner.

13. **Indemnification.** Each party agrees to hold the other party, its parent, its subsidiaries, and their officers, directors, employees and agents harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorney's fees) arising by virtue of a breach of any representation or warranty made herein or a breach by the indemnitor of any material provision herein. In the event of any claims or litigation to which these indemnities apply, the party claiming the indemnity shall promptly notify the other party of same. The indemnitor may elect to assume the defense of any such claim or litigation; the indemnitor's obligations with respect thereto shall be limited to holding the indemnified parties harmless from and against any loss or damage or costs caused by or arising out of any judgment or any settlement approved by the indemnitor who elects to assume such defense. The indemnitee shall have the right, but not the obligation, to be represented by its own counsel at its own expense. If the indemnitor does not assume, any settlement thereof by the indemnitee shall be subject to the indemnitor's prior approval which will not be unreasonably withheld.

14. **Operator Challenges.** Operator may, at its expense, (and, if necessary, in the name of, but without expense to Owner) defend the exclusivity rights granted Operator in Section 1.A. above, or may contest, by appropriate proceedings prosecuted diligently, the validity or applicability of any law or requirement of public authority to the Property or the services provided by Operator hereunder, and Owner shall fully cooperate with Operator in such proceedings. Operator shall defend, indemnify and hold Owner harmless against all liability, loss or damage which Owner shall suffer by reason of such non-compliance or contest, including reasonable attorney's fees. Operator need not comply with any such law or requirement during Operator's challenge to its validity or law or requirement during Operator's challenge to its validity or applicability to the Property or the services provided by Operator.

15. **Partial Condemnation.** In the event that a portion of the Property, or all or any material part of the Equipment or MATV System, is appropriated or condemned pursuant to law or police powers, or that the provision of the SDS is in any manner affected by the forced installation of the equipment of a third party provider of multichannel video programming services in contravention of Section 1.A. above through operation of law or otherwise, Owner and Operator each may prosecute, on its own behalf, any claim which either has against said governmental agency and/or third party, provided that Operator may always challenge such condemnation or forced access with Owner's cooperation in accordance with Section 14 above. In the event such appropriation, condemnation or forced installation of equipment renders operation of the SDS uneconomical in Operator's sole judgment, Operator may terminate this Agreement without any penalty.

16. **Condemnation.** In the event the entirety of the Property shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Agreement shall terminate, as of the date of such taking, and each party thereupon shall be released from any liability thereafter accruing hereunder.

17. **Insurance** Operator at its sole cost and expense shall carry public liability insurance. The amount of such insurance for bodily injury and property damage liability shall not be less than a combined single limit of \$1,000,000 for each occurrence and a \$2,000,000 aggregate limit with a written renewal each year for owner.

18. **Owner's Warranties**. Owner represents and warrants to Operator, with full knowledge that Operator is acting in reliance upon same in executing this agreement and in performing its obligations hereunder, that it is the legal and beneficial owner of, and holds record title to, the Property; that it is fully authorized to grant to Operator the exclusive rights as provided herein, and that its execution of this Agreement shall not cause a breach of any other current or previously existing contract or agreement, oral or written, applicable to the Property, including any lien, mortgage, deed of trust, or encumbrance; that it has the full power and authority to enter into and deliver this Agreement and to perform its obligations hereunder and has taken all necessary corporate or partnership action to authorize the execution, delivery and performance of this Agreement; and that this Agreement is valid, binding and enforceable against it in accordance with its terms and provision. Owner further represents and warrants that it has disclosed to Operator all easements and licenses granted to a utility or other third party including any other video services provider; all contracts or agreements, oral or written, with any utility or other video services provider, including but not limited to agreements concerning the ownership or use of the MATV System; all correspondence or oral discussions with any other video services provider, including but not limited to correspondence or oral discussions concerning the ownership or use of the MATV System or the duration of any access right that may have been granted to such video services provider.

19. **Severability**. Except with respect to the exclusivity granted to Operators in Section 1.A. hereof, if any provision of this Agreement, as applied to either party or to any circumstance, shall be adjudged by a court to be invalid, illegal or unenforceable, the same shall not affect the validity, legality, or enforceability of any other provision of this Agreement, or the application of such provision in any other circumstances. Should the exclusivity granted in Section 1.A. hereof be adjudged invalid, illegal or unenforceable, Operator may continue this Agreement on a nonexclusive basis or terminate this Agreement in its absolute discretion without any penalty to Operator whatsoever.

20. **Relationship of the Parties**. The parties shall not be considered joint venturers, partners, agents, servants or employees of each other for any purpose, and the parties disclaim any intention to create any such relationship between them.

21. **Notices**. All notices that are required or permitted hereunder shall be sufficient if given in writing and delivered personally or by registered or certified mail, return receipt requested, postage prepaid, to the address set forth on the signature page

hereto (or such other addresses or address as shall be set forth in a notice given in the same manner).

22. Governing Law. This Agreement shall be governed by and enforced in accordance with the substantive laws of Missouri, without reference to the principles governing the conflict or choice of laws applicable in that or any other jurisdiction.

23. Waiver. No waiver, which shall only be effective if written, of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default.

24. Entire Agreement. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by written instrument duly executed by each of the parties.

25. The parties agree to execute a Memorandum of Understanding that will be recorded at the local land records.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

PEOPLE'S CHOICE TV OF
St. Louis, INC.

By: Dennis G. Walsh

Title: VP/GM

Address: _____

Date: 11/3/94

[OWNER]

By: [Signature]

Title: Vice Pres

Address: 9736 Broadway

Date: 11/3/94

copy to discuss
for

RENT-TO-OWN SATELLITE LEASE AGREEMENT

THIS SATELLITE LEASE AGREEMENT (the "Agreement") made this 9 day of DECEMBER 1994, by and between **INTERACT PRIVATE CABLE CORPORATION**, a Florida corporation ("INTERACT"), and SHIREL INC. ("OWNER").

WHEREAS, OWNER is the owner of a commercial establishment called THE NEW WATERSIDE INN located at 2360 COLLINS AVE, MIAMI BEACH FL 33139, phone 305 538 1951 (the "Business"), as evidenced by the business or occupational license attached hereto as Exhibit "A";

WHEREAS, OWNER desires to lease certain satellite equipment from INTERACT in order to provide satellite television services to the Business;

WHEREAS, the parties hereto desire to enter into an agreement, upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual representations, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, INTERACT and OWNER, desiring to be legally bound, hereby agree as follows:

1. SATELLITE CABLE SYSTEM.

(a) **Installation of the System.** INTERACT will design, install, upgrade and maintain the satellite reception and cable television system, including all wiring and other equipment, consisting substantially of the items listed on Exhibit "B" attached hereto and made a part hereof and all replacements and improvements thereto, delivered to or installed in or for the benefit of the OWNER during the term of this Agreement, reasonably required to furnish cable television services at the Business (collectively, the "System"). Connections and installation will be the sole responsibility of INTERACT. The System will be installed in such space as mutually agreed upon by both INTERACT and OWNER. OWNER will provide and maintain a climate controlled space and electrical service, at OWNER's expense, for the headend electronics and related components. This site must meet the technical requirements specified by INTERACT.

(b) **Ownership of the System.** Unless otherwise agreed to by amendment, title to the System (which includes all wiring) shall remain at all times, from now and forever, including after the termination of this Agreement, the exclusive property of INTERACT.

(1) Under no circumstances shall the System or the wiring therefor be considered a fixture of, on or to the Business. INTERACT shall, at all times, have the right, privilege, power and means to remove and recover the System, or continue to enforce this Agreement, should OWNER (i) apply for or consent to the appointment of a receiver, trustee, custodian, trustee in bankruptcy, intervenor or liquidator for itself or a substantial part of its assets; (ii) admit in writing its inability to pay its debts as they mature; (iii) make an assignment for the benefit of creditors; (iv) be adjudicated a bankrupt for the benefit of creditors; (v) be adjudicated a bankrupt or insolvent; (vi) file a petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or seeking to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute or an answer admitting an act of bankruptcy alleged in a

petition filed against it in any proceeding under any such law; or (vi) take any action for the purpose of effecting any of the foregoing; or if any such petition or application shall have been filed or proceeding commenced against OWNER or if any such custodian, receiver, intervenor or trustee shall have been appointed for OWNER.

(2) OWNER agrees to keep the System free and clear of all liens, claims and encumbrances other than created by this Agreement. INTERACT will be solely responsible for the cost of the System and the maintenance and replacement thereof.

(3) No other person, entity or cable, satellite, computer or other company shall have the right to (i) provide cable television, or similar services to the Business or (ii) use the System (which includes all of INTERACT's wiring and other property and equipment), unless INTERACT shall have consented, in writing, prior thereto.

(c) This exclusive grant to INTERACT herein by OWNER is irrevocable and shall be deemed to be an easement and covenant which shall run with the land for the term of this Agreement, and the undertakings and obligations created herein shall be binding on and inure to the benefits of all future OWNER(s) of the property. OWNER agrees to include this contract as a title interest in the property deed, and further agrees to provide evidence of such registration in the form of a copy of the notarized filing with the appropriate authority.

(d) INTERACT and OWNER may mutually agree to include additional Businesses for the provision of INTERACT's services.

(e) OWNER represents and warrants that the System serves the entire Business. The total number of television units in the Business is . This Agreement covers all these units plus all additional units added to the Business in the future.

2. FEES AND PAYMENT

OWNER agrees to pay to INTERACT as follows:

(a) A security deposit of \$ 983.20. The deposit will be refunded, without interest, to OWNER at the end of year _____ of this Agreement.

(b) A monthly payment (the "Monthly Payment") of:
\$ 491.60 in year 1.
\$ 420.45 in year 2.
\$ 368.70 in year 3.
\$ _____ in year 4.

The first payment is due FEB. 1 1995.

Each Monthly Payment must be received prior to the tenth of each month, or service may be suspended until payment is received and cleared.

In addition to the right of INTERACT to suspend service as specified in subsection (b) above, should OWNER fail to pay INTERACT the Monthly Payment by the tenth of any month, OWNER agrees to pay INTERACT a fee equal to 5% of the Monthly Payment or \$50, whichever is greater (the "Late Fee"). Should OWNER fail to pay the Monthly Payment and the Late Fee by the 20th of any month, INTERACT has the right to (i) remove the System at OWNER's expense and (ii) accelerate the payments due under this Agreement. OWNER will be responsible for all incidental expenses of removal and collection, including attorney's fees associated therewith.

3. FURTHER COVENANTS OF OWNER

OWNER hereby covenants and agrees as follows:

(a) Access to Property. OWNER hereby grants to INTERACT the right to enter the Business between the hours of 9 a.m. to 9 p.m., 7 days a week, for the purpose of soliciting customers for the satellite/cable television service described herein. OWNER additionally grants INTERACT the right of full time access, 24 hours a day, for the purpose of maintaining, modifying, installing, repairing or removing the System, with prior notification of management.

(b) Insurance. Throughout the term of this agreement, INTERACT will maintain comprehensive general liability insurance covering INTERACT and OWNER for bodily injury liability and property damage liability with coverage in the amount of at least \$1,000,000 combined single-limit occurrence.

OWNER will provide, at his own expense, casualty insurance in the amount of at least \$500,000 combined single-limit per occurrence, protecting the investment of INTERACT in the event of the damage or loss of the System through fire, theft, flood, demolition or any other act not under the direct control of INTERACT. Such insurance will cover the current cost of replacement for all damaged and lost items, and provide for lost revenue, if any, during the course of repair. OWNER further agrees to list INTERACT as additional insured on said policy.

4. REPRESENTATIONS AND WARRANTIES OF OWNER

In order to induce INTERACT to enter into this Agreement, OWNER hereby represents and warrants to INTERACT as follows:

(a) OWNER has the full right and power, and is duly authorized, to enter into and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement and the performance by OWNER of its obligations hereunder have been duly authorized by all necessary partnership, corporate or other actions by or on behalf of OWNER.

(b) The execution, delivery, and performance of this Agreement in accordance with its terms does not conflict with, violate, or breach any term, condition or provision of (i) the Articles of Incorporation or Bylaws of OWNER, if applicable, (ii) any agreement, obligation, document or instrument pursuant to which OWNER or

its proper assets is bound or subject, or (iii) any writ, decree, judgment, order or decree of any court, governmental agency or instrumentality applicable to OWNER or its property or assets.

(c) This Agreement is the legal, valid and binding obligation of OWNER, enforceable against OWNER in accordance with its terms.

(d) There are no claims, causes, suits or proceedings pending or threatened before any court or by or before any governmental or regulatory authority, commission, bureau or agency or public regulatory body or arbitrator that, if adversely determined, would have an adverse effect on OWNER's ability to perform its obligations under this Agreement.

(e) OWNER has conducted, and will continue to conduct, its business and activities in compliance with all applicable material foreign, federal, state and local laws, rules, regulations and ordinances. All of the representations and warranties of OWNER contained in this Agreement are true and correct and all covenants and agreements of OWNER contained in this Agreement will be performed in accordance with their terms in all respects.

5. REPRESENTATIONS AND WARRANTIES OF INTERACT

In order to induce OWNER to enter into this Agreement, INTERACT hereby represents and warrants to INTERACT as follows:

(a) INTERACT has the full right and power, and is duly authorized, to enter into and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement and the performance by INTERACT of its obligations hereunder has been duly authorized by all necessary partnership, corporate or other actions by or on behalf of INTERACT.

(b) The execution, delivery, and performance of this Agreement in accordance with its terms does not conflict with, violate, or breach any term, condition or provision of (i) INTERACT's Articles of Incorporation or Bylaws, (ii) any agreement, obligation, document or instrument pursuant to which INTERACT or its property or assets is bound or subject, or (iii) any writ, decree, judgment, order or decree of any court, governmental agency or instrumentality applicable to INTERACT or its property or assets.

(c) This Agreement is the legal, valid and binding obligation of INTERACT, enforceable against INTERACT in accordance with its terms.

(d) There are no claims, causes, suits or proceedings pending or threatened before any court or by or before any governmental or regulatory authority, commission, bureau or agency or public regulatory body or arbitrator that, if adversely determined, would have an adverse effect on INTERACT's ability to perform its obligations under this Agreement.

(e) INTERACT has conducted, and will continue to conduct, its business and activities in compliance with all applicable material foreign, federal, state and local laws, rules, regulations and ordinances. All of the representations and warranties of INTERACT contained in this Agreement are true and correct and all covenants and agreements of INTERACT contained in this Agreement will be performed in accordance with their terms in all respects.

6. OPTION TO PURCHASE SYSTEM

OWNER will have the right (the "Option") to purchase the System at its depreciated market value at the time of the termination of this Agreement (the "Option Price"). The Option Price for the System is \$ 2,445.00. OWNER shall notify INTERACT of its desire to exercise the Option thirty (30) days prior to the termination of this Agreement.

7. TERM AND TERMINATION.

- (a) OWNER hereby leases the System from INTERACT and grants to INTERACT an exclusive right to install, inspect and maintain the satellite/cable television equipment, lines and facilities described in this Agreement for a period of THREE (3) years from the date of this Agreement.
- (b) This contract may not be canceled by OWNER for any cause, whatsoever, except for the failure of INTERACT to build and operate the System in accordance with the specifications set forth in Exhibit "C" of this agreement. A breach of contract will occur only after OWNER has notified INTERACT, in writing, of the failure to meet the required specification and has given INTERACT thirty (30) days to correct such failure. In the event of any breach of contract, other than for just cause as defined in this Agreement, OWNER shall be liable to INTERACT for damages. The amount of such damages will be determined by the number of months left until the termination of the contract term, as specified in subsection 7(a), times the Monthly Payment for the year or years in question.
- (c) Notwithstanding anything contained in subsection 7(a) above, this Agreement may be terminated with respect to the Business serviced by INTERACT, upon written notice of such termination given to the OWNER, if the FCC or any other federal, state, or local regulatory agency or authority (an "Agency") shall issue an order, writ, injunction or decree which has the effect of prohibiting, or materially restricting or limiting, the application, use or sale of INTERACT's services as contemplated by this Agreement; or if any such Agency shall determine, decree or notice that the application, use or sale of INTERACT's services as contemplated by this Agreement is unlawful.
- (d) In the event this Agreement is terminated, (i) OWNER shall be liable and responsible for the return to INTERACT of all property, equipment and wiring installed or provided by INTERACT at OWNER's Business, and (ii) except as noted in subsection (e) below, no party shall have any further liability or obligation hereunder unless such termination is a result of such party's fraud, bad faith or willful misconduct.
- (e) In the event of a termination of this Agreement, INTERACT shall be permitted to remove all property and equipment, including all wiring, provided by INTERACT upon any such termination. To this end, OWNER shall provide INTERACT with reasonable access to its facilities, and shall otherwise cooperate with and assist INTERACT, in order to provide for the removal of all property and equipment and wiring.

8. INDEMNIFICATION.

The parties agree to indemnify and hold each other harmless as follows:

- (a) INTERACT shall indemnify and hold harmless OWNER and its respective officers, directors, employees and agents from and against all liabilities, claims, costs, damages, losses and expenses, including reasonable attorneys' fees and costs, at both the trial and appellate levels, arising from the installation of the System and the services provided by INTERACT, or any material breach on the part of INTERACT of any of its representations or warranties hereunder or the material nonperformance by INTERACT of any of its covenants, agreements or obligations hereunder. INTERACT shall not be responsible or liable for any program content, including, but not limited to claims of libel, defamation, copyright or trademark infringement.
- (b) OWNER shall indemnify and hold harmless INTERACT and its officers, directors, shareholders, employees and agents from and against all liabilities, claims, costs, damages, losses and expenses, including reasonable attorney's fees and costs, at both the trial and appellate levels, arising out of any breach on the part of OWNER of any of its representations or

warranties, covenants or the nonperformance by OWNER of any of its covenants, agreements or obligations hereunder.

9. MISCELLANEOUS.

- (a) **Excused Performance.** INTERACT shall be excused for any delay or failure to perform due to fire, Act of God, or similar catastrophe, or labor strike affecting INTERACT or their suppliers or subcontractors, or material change in Federal, State, or local law, or other cause beyond its control, so long as (i) the event which forms the basis of such excuse was not due to the fault, malice or neglect of INTERACT, and (ii) INTERACT uses reasonable efforts to remedy such event and continue performance under this Agreement as promptly as practicable.
- (b) **Entire Agreement. No Other Rescissions.** This Agreement reflects and represents the entire agreement between the parties with respect to the subject matter hereof, and there are no agreements, promises, understandings, arrangements, representations, warranties or covenants between the parties other than those set forth in this Agreement.
- (c) **Notices.** Any notices under this Agreement shall be in writing and shall be deemed sufficiently made upon personal delivery, with receipt acknowledged, or three days following transmission if transmitted by postage prepaid, first class, certified or registered mail, return receipt requested, by overnight courier (with receipt acknowledged) or by telegraph or telex, to the persons at the addresses appearing below:

If to INTERACT:

Interact Private Cable Corporation
2400 E. Commercial Blvd
Suite 814
Fort Lauderdale, Florida 33308
Attention: Philip Baratz, President
Phone 305-452-5307
Fax 305-938-8626

With a copy to:

Greenberg Traurig Hoffman Lipoff Rosen & Quentel, P.A.
515 E. Las Olas Boulevard, Suite 1500
Fort Lauderdale, Florida 33301
Attention: Keith Wessensstrom, Esq.
Phone 305-768-8281
FAX 305-765-1477

If to OWNER: at address specified on page 1 hereof

Either party may change its address for notice by giving written notice of such change in accordance with this subsection.

- (d) **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or un-enforceability without invalidating the remaining provisions hereof or extent of enforceability thereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- (e) **Florida Law.** This Agreement, its validity, construction and performance shall be governed by, and construed applied, enforced and interpreted in accordance with the internal laws of the State of Florida, except that no doctrine of choice of laws shall be used to apply any law other than that of Florida. OWNER and INTERACT agree that any action or proceeding to enforce or arising out of this Agreement must be commenced in the state courts of the County in which INTERACT's principal offices are located, or in the United States District Court in the County in which INTERACT's principal offices are located. OWNER consents to such jurisdiction, agrees that venue will be proper in such courts and waives any objections based upon forum non conveniens or related principles.

... or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees, costs, and expenses incurred in connection with such action or any appeal or enforcement of judgment obtained in such action, including those on appeal.

(g) Specific Performance. Each of the parties hereto acknowledges and agrees that the other would be irreparably harmed and damaged in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties hereto agrees that the other shall be entitled to an injunction or injunctions or other special or equitable relief to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any State thereof having subject matter jurisdiction, in addition to any other remedy to which such party may be entitled, at law or in equity.

(h) Agreement To Take Actions. Each party hereto shall perform its covenants and agreements promptly and diligently, and shall not take any action or omit to take any action which might adversely affect its ability to perform the obligations or consummate the transactions contemplated by this Agreement, and shall execute and/or prepare and deliver such records, documents, certificates, agreements and other writings and take such other actions as may reasonably be necessary in order expeditiously to perform any such obligations and/or consummate any such transactions.

(i) No Third Party Beneficiaries. This Agreement and the rights, benefits, privileges, interests, duties and obligations, contained or referred to herein shall be solely for the benefit of the parties hereto and no third party shall have any rights or benefits hereunder as a third-party beneficiary or otherwise.

Agreement shall be in writing and signed by both INTERACT and OWNER in order to be effective.

(k) Headings. The headings contained in this Agreement are for convenience of reference only and shall not affect the interpretation, construction or meaning of any term or provision hereof.

(l) Assignment. This Agreement is nonassignable and nontransferable by OWNER without the prior written consent of INTERACT, however, in the event that a third party purchases, indirectly or directly, a controlling interest, a controlling equity ownership or substantially all of the assets of OWNER, INTERACT's consent shall not be withheld unreasonably, and the successor to OWNER must expressly assume all obligations hereunder as then in effect. INTERACT may assign its rights under this agreement to any other person or entity without OWNER's prior consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

(m) Counterparts. This Agreement may be executed in one or more counterparts, and by the parties hereto in separate counterparts, each of which is an original and all of which together shall constitute one and the same agreement, which agreement shall become effective when one or more counterparts have been executed by each party and delivered to each other party.

IN WITNESS WHEREOF, OWNER and INTERACT have each duly executed and delivered this Agreement on this _____ day of _____, 19____.

INTERACT PRIVATE CABLE
CORPORATION

OWNER:

By: _____

By: _____

Name: Phillip Baratz

Name: _____

Title: President and CEO

Title: _____

Witnessed by:

PHILIP BARATZ

PROPOSED EQUIPMENT LIST #2

QTY	ITEM/ MODEL	COSTS
2	PERFECT "10" SATELLITE ANTENNAS	
1	CHAPARRAL DUAL FEED	
1	CHAPARRAL PRE#1 FEED	
3	CAL AMP 25k LNB'S	
1	SUPERJACK 18" ACTUATOR	
2	WALL/ ROOF MOUNTS W/HARDWARE	
1	WINEGARD BROADBAND ANTENNA	
1	WINEGARD CH 6 ANTENNA	
1	30' TELESCOPIC MAST W/ HARDWARE	
6	PLASTIC PEDALSTALS	
12	8 WAY SPLITTERS	
1	6 WAY DIRECTIONAL	
6	2 WAY DIRECTIONAL	
ALL	WIRING/ HARDWARE FOR DISTRIBUTION	
3	UNIDEN 4200 SATELLITE RECEIVERS	
3	GENERAL INSTR. VCRS DESCRAMBLERS	
1	UNIDEN 4400 SUPER SATELLITE RECEIVER	
4	HOLLAND VHF MODULATORS	
1	6 CHANNEL COMBINER	

TOTAL COSTS

\$ 8,995.00

Perfect 10' ANTENNA

CHAPARRAL PRE#1 FEED

CAL AMP 25K LNB

Superjack 18" Actuator

UNIDEN 4400 SUPER SATELLITE RECEIVER

6CH MAX MODULATOR

\$ 2545.00

RENTAL WORK SHEET

SYSTEM COSTS FROM \$10,000.00 TO 19,999.00

BUSINESS NAME: WATERSIDE INN OCCUP #:

BUSINESS ADDRESS: 2360 COLLINS Ave.

BUSINESS TELEPHONE: 538-1951

OWNER/MANAGER IN CHARGE: GERARD & MARVSE MEULLEN

DEALER NAME & SALESPERSON:

INSURANCE COMPANY: POLICY #:

1 YEAR RENTAL AGREEMENT:

YEAR	FACTOR	COST/SYSTEM	MONTH/RENT	SALE/TAX	TOTAL/MONTHLY
1st	.100	\$			\$

OPTIONAL BUYOUT \$

2 YEAR RENTAL AGREEMENT:

YEAR	FACTOR	COST/SYSTEM	MONTH/RENT	SALE/TAX	TOTAL MONTHLY
1st	.050	\$			\$
2nd	.045	\$			\$

OPTIONAL BUYOUT \$

3 YEAR RENTAL AGREEMENT:

YEAR	FACTOR	COST/SYSTEM	MONTH/RENT	SALE/TAX	TOTAL MONTHLY
1st	.040	\$11,540 ⁰⁰	461.60	30.00	\$491.60
2nd	.035	\$11,540 ⁰⁰	403.90	26.25	\$430.15
3rd	.030	\$11,540 ⁰⁰	346.20	22.50	\$368.70

OPTIONAL BUYOUT \$2045.00

~~Subscription 105.00 per year~~

PROPOSED CHANNEL LINE UP

ON TV DIAL	CHANNEL ID	PER ROOM/ PER MONTH
CH. 2	WPBT/ PBS	N/C
CH. 3	MESSAGE GENERATOR/ OPTIONAL	N/C NO
CH. 4	WTVJ/ NBC	N/C
CH. 5	CNN/ HEADLINE NEWS	.60
CH. 6	WCIX/ CBS	N/C
CH. 7	WSVN/ FOX	N/C
CH. 8	ESPN/ SPORTS	1.25
CH. 9	WTBS/ ATLANTA	.35
CH. 10	WPLG/ ABC	N/C
CH. 11	MOVABLE SATELLITE/ FOREIGN	N/C
CH. 12	WLTV/ CH. 23 SPANISH	N/C
CH. 13	WSCV/ CH. 51 SPANISH	N/C
CH. 14	WBFS/ IND. CH. 33	N/C
CH. 15	WDZL/ IND. CH. 39	N/C
CH. 16	MOVABLE SATELLITE/ FOREIGN #2 OPTIONAL	N/C

TOTAL PROGRAMMING COSTS FOR 50 ROOMS \$2.20 PER MONTH EACH ROOM.

ANNUAL COST FOR PROGRAMMING \$1,320.00

Actual channel Line-up

Espr

CNN

French channels - 2

off-AIRS



Bard French

2400 E. Commercial Blvd.
Suite 814
Fort Lauderdale, Florida 33308
(305) 452-5307
Fax (305) 938-8626

AY FOR CABLE A

month

\$400 0

ON ANY INSTALLED TOSHIBA S

OR

FREE

HOME SECURITY SYSTEM

Must Present Coupon. \$1200 VALUE Expires 12/9/94

Satellite

LICENSED AND INSURED CGCA07800
OVER 7000 INSTALLATIONS

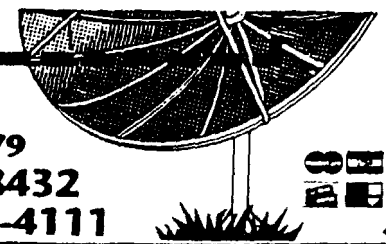


**Interact
Private Cable**

Ed Berkhof

2400 E. Commercial Blvd.
Suite 814
Fort Lauderdale, Florida 33308

(305) 452-5307
Fax (305) 938-8626



1-800-281-6379
DADE 305-944-8432
BROWARD 305-776-4111

Supplement To The Miami Herald North Dade 653-2438 South Dade 671-4300 Broward 985-4595



HEARTLAND WIRELESS COMMUNICATIONS, INC.

WIRELESS CABLE TELEVISION

RIGHT OF ENTRY AGREEMENT

REBATE



THIS RIGHT OF ENTRY AGREEMENT (herein "Agreement") entered into this 1st day of January, 1996, between Medlock Southwest Management Corporation, (the "Owner"), whose address is P. O. Box 5117, Lubbock, TX, and Heartland Wireless of Lubbock, (the "Company"), whose address is 6102 B 45th Street, Lubbock, TX.

WITNESSETH:

WHEREAS, the Owner is the Owner of an apartment complex containing 70 units known as Casa Orlando Apartments, (the "Property") located at 1810 3rd Street Lubbock, TX 79415, on property more particularly described in Exhibit "A" attached hereto and a part hereof (the "Property");

WHEREAS, Company is in the business of providing a Cable Television System, commonly referred to as the "Cable System" (the "System") to residential customers in multifamily properties;

WHEREAS, the Owner desires to make the Cable service available to the residents and occupants (the "Tenants") of the Property, and Company is willing to provide such service in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. Company's Television Services.

1.1 Television Service. During the term of this Agreement, Company shall offer and be capable of supplying basic cable television signals and pay television signals listed on Exhibit "B" attached hereto to Tenants who enter into subscription agreements with Company ("Subscribers"). However, Company reserves the right to modify or change programming at any time.

1.2 Television System Design. Company will design the system and other equipment, including, without limitation the television headend, wiring and cabling (the "Television System") as necessary for the professional and efficient provision of the Television Services to the Property in accordance with the highest standards set forth in this Section 1.3.

1.3 Television System Installation. Company shall, at its sole cost and expense, construct and install the Television System.

1.4 Maintenance and Repair. Company shall maintain the Television System to keep it, where possible, in a continuous state of operation.

1.5 Television Rates. The initial rates to be charged to the Owner for the portions of the Television Service desired shall be as specified on Exhibit "B" and are subject to change only for programming cost, adjustments, and any new service offered.

1.6 Control and Ownership of the Television System. Company shall retain the right of control over the Television System. Title and Ownership of the system shall remain and be vested in the company.

1.7 Television Revenues. Company is entitled to Total Revenues and responsible for Total Expenses collected or arising from the operation of its Television System. Company shall be responsible for the billing and collection related to the Television System. Owner shall not be responsible to Company for any delinquent accounts of Subscribers.

1.8 Owner Remittance. Company shall remit to Owner annually on the 15th of each July during the term hereof, an amount equal to _____ten _____ percent (_____10_____%) of the receipts derived by Company from the Television Service of the Television System during the preceding calendar year.

1.9 Television Service for Owner. Company agrees to furnish to Owner, at Owner's option, during this Agreement, without charge to Owner, one outlet of equipment and Television Service.

1.10 Indemnification. Company shall Indemnify Owner from all Claims and Costs arising out of, or in any way related to, the Television